IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1175 of 2001.

Decided on: 1.06.2007.

Brij Lal Gupta.

… … … Petitioner.

Versus

Union of India and Another.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: **Mr. M.L. Sharma, Advocate.**

For the Respondents: **Mr. M.A. Khan, Central Government Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner has joined the Indian Army as a Signal Man with Regimental No.6257391 in Depot Company Signal Record, Jabalpur. During war service between 22.7.1956 to 3.6.1957 in Naga Hills, he suffered physical disability diagnosed as 'recurrent shoulder dislocation' and thereafter was discharged from the army service w.e.f. 16.7.1958. His medical disability was assessed at 25%. He was allowed disability pension w.e.f. 17.8.1958 till

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Whether reporters of local papers may be allowed to see the judgment? No.

28.5.1974. His disability pension was discontinued on the ground that his disability had over the years reduced to less than 20%. He made representation to respondent No.2 on 16.9.2000 for restoration of his disability pension.

The Deputy C.D.A. (O&M) has sent a communication to the Record Officer, ASC on 23rd December, 1992 and the relevant portion of the same is reproduced below:-

> **"The disability pension constitutes two elements (i) service element and (ii) disability element. The disability element, is payable for a limited period as notified in the pension payment order(s) notified from time to time unless it is notified for life. However, the service element of disability pension is payable for life only in respect of such individuals who were retired/discharged from service or invalided out of service as under:**
>
> **(i) Individuals invalided out of service before 01-03-68 with 10 years or more service.**
>
> **(ii) Individuals invalided out of service on or after 1-3-68 but before 31-12-72 with more than 5 years or more service.**
>
> **(iii) Individuals invalided out of service on or after 1-1-73 with any period of length of service.**
>
> **In view of the above provisions, the pension disbursing Authorities in the case of individuals at item (i) and (ii) above shall make payment of service element of disability pension for life only where it is specifically notified by the Controller of Defence Accounts (Pensions) in its pension Payment Order and in the absence of such specific authorization for life, the**

service element shall be payable only for the period for which disability element is authorized.

The above position should be noted for strict compliance. The case of Ex.138381485 Ex Mect/MT Babu Chamar referred to in your DO letter dated 16-12-92 has been reviewed and further direction given in this office letter No.G.3/RA/3/92/3105/IV dt. 9-12-92. However, a telegraphical confirmation regarding non-payment of service element to the individual is being sought for from Treasury Officer, Kolhapur."

The petitioner had served the Indian Army for eight years and 96 days and was getting disability pension upto 28.5.1974 after his disability was adjudged at 25%.

Mr. M.L. Sharma had strenuously argued that the respondents could not classify the individuals invalided out of service for the entitlement of service element of invalid pension into (i) those who retired before 1.3.1968, (ii) those who retired on or after 1.3.1968 and before 31.12.1972, and (iii) those who retired after 1.1.1973 and providing minimum qualifying service of 10 years, 5 years and nil for three categories. Mr. M.A. Khan had supported the decision of the respondents of not releasing disability pension to the petitioner after 28.5.1974.

I have heard the parties and perused the record.

The petitioner had put in 8 years and 96 days service at the time of his discharge as is evident from Annexure R-1. His disability was adjudged at 25% on the basis of which he had been granted pension. He was receiving pension upto 28.5.1974. His disability pension was discontinued w.e.f. 29th May, 1974 since his

disability was assessed less than 20% vide Principal Controller of Defence Accounts (Pensions), Allahabad letter dated 12th August, 1976.

The question which falls for consideration before this Court is whether the incumbents who had been discharged and were getting disability pension can be put in three categories (i) who retired before 1.3.1968, (ii) those who retired on or after 1.3.1968 and before 31.12.1972 and (iii) those who retired after 1.1.1973 with minimum qualifying service of 10 years, 5 years and nil. This question of categorization/classification of homogeneous class in to three segments without any valid nexus has been considered by the Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India, 1995 (4) SCT 278*** as under:

> **"From the documents which have been placed on record, it is clear that the petitioner was discharged from the military service on the ground of low medical category. He was given medical category 'EEE' at the time of discharge from the service. Annexure P-2 is conclusive proof of the fact that the petitioner was given disability pension. This disability pension must have been given to the petitioner on fulfillment of the conditions enumerated in Regulations 173 of the Pension Regulations. By virtue of order (Annexure P-5) the Government of India took a policy decision to extend the benefit of the disability pensin to the Army personnel below the officer rank who were granted disability pension at one time but whose disability fell below 20 per cent at a later stage. Annexure P-6 contains similar instructions regarding the grant of disability pension of those whose disability falls below 20 per cent.**

However, the instructions contained in Annexure P-6 have been made applicable only to those who were on the effective strength of the Army on 1.1.1973. If the petitioner has been discharged from the service after 1.1.1973, he would have become entitled to the grant of disability pension notwithstanding the fact that his disability was subsequently reduced below 20 per cent. Therefore, not it has to be seen whether the restricted application of the instructions contained in Annexure P-6 has got any rationality. There can be no manner of doubt that the petitioner was in receipt of the disability pension as on 1.1.1973 and he continued to draw the disability pension upto 20.8.1974. Some of the Army personnel who were discharged from service after 1.1.1973 and who were given disability pension after 1.1.1973 were placed at par with the petitioner. With reference to the object of giving the benefit of disability pension to those whose disability fell below 20 per cent, the petitioner and others who were discharged after 1.1.1973 constituted one class. With reference to the object aforementioned, there could be no rationales of confining the benefit of the disability pension only to those who were discharged after 1.1.1973. The entire object of extending the benefit of the disability pension even after the reduction of the degree of disability will be frustrated in the cases of the persons like the petitioner, who was actually in receipt of the disability pension on 1.1.1973 but whose disability fell below 20 per cent after 1.1.1973 are denied benefit of disability pension. To me, fixation of the date as 1.1.1973 has absolutely no nexus with the object of granting the disability pension to those who were initially having the disability of 20 per cent or more but whose degree of

disability reduced at a later point of time. To this extent the provisions contained in Annexure P-6 are liable to be declared as unconstitutional.

In the result, the writ petition is allowed. The following expression in the order Annexure P-6 is declared ultra vires to Article 14 of the Constitution:-

"These orders will take effect from 1st January, 1973 i.e. these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter."

The respondents are directed to give benefit of the disability pension to the petitioner as had been given to those who have been discharged from the service after 1.1.1973."

The Hon'ble Punjab and Haryana High Court has held that the classification made within the classification was not valid and different periods could not be prescribed for similarly situate personnels.

Accordingly, the period prescribed as per Annexure P-4 dated 23rd December, 1992, 10 years for individuals invalided out of service before 1.3.1968, 5 years for individuals invalided out of service on or after 1st March, 1968 but before 31.12.1972 has no nexus with the object sought to be achieved. All the individuals invalided out of service form homogeneous class and cannot be permitted to be discriminated against on the basis of the prescription of different periods. All the individuals who had been invalided out of service after suffering the disability have to be treated equally. If there is no length of period of service for the

individuals invalided out of service after 1973, the same cannot be permitted to be prescribed for two categories as mentioned above. The respondents cannot treat the equals as un-equals. Accordingly, the clauses (i) and (ii) of communication dated 23rd December, 1992 are liable to be quashed and set aside with a direction that the petitioner is to be treated at par with the category, i.e. category (iii) for working out the pension.

Consequently, this petition is allowed. Clauses (i) and (ii) of Annexure P-4 are quashed and set aside. The petitioner is directed to be treated at par with the individuals invalided out of service on or after 1st January, 1973 and he is held entitled to all the benefits of the disability pension as has been granted to those who have been discharged from the service after 1.1.1973. The respondents are directed to work out the monetary benefits within a period of three months from today. The parties are left to bear their own costs.

June 1, 2007 **(Rajiv Sharma)**
(sck). **Judge**